S.B. Civil Writ Petition No.1061/02

24.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr.Ram Gopal Choudhary for petitioners.
Mr. B.S. Chhaba, Dy. GA
Mr. Sanjay Mehrishi for respondent no.4 & 5.

The petitioner has filed this writ petition challenging the order dated 14.5.2001 passed by the respondents. According to Mr. Ram Gopal Choudhary, learned counsel for the petitioner, this order was passed without providing to the petitioner an opportunity of hearing. The petitioners were allotted the land in question by earlier allotment letter issued by Sub-Divisional Officer, Aklera. They also deposited the patta fee. The Dy. Secretary to the Government by order dated 14.5.2001 however cancelled their

allotment on the ground that the order of allotment dated 4.12.2000 was contrary to their earlier order dated 29.7.2000 passed by the Government whereby the same land was ordered to be allotted in favour of the respondent no.4 and 5. The learned counsel for the petitioners therefore submits that the order dated 14.5.2001 be quashed and set aside and the order dated 4.12.2001 be restored.

On the other hand Mr. Chhaba, learned Dy. Government Advocate and Shri Sanjay Mehrishi learned counsel for the respondent no.4 and 5 submits that the allotment order passed in favour of the petitioners was made in contravention of earlier order of the Government dated 29.7.2000 which was addressed to Sub-Divisional Officer himself and copy thereof was also endorsed to District

Collector and Tehsildar Khanpur. The Sub-Divisional Officer, Aklera had therefore no legal authority to bypass the order of the Government and make allotment of the land in dispute in favour of the petitioners. According to him, even if the order was without providing opportunity of hearing to the petitioner, relegating the matter again to the government for providing an opportunity of hearing to the petitioner is not likely to return any other result except this and therefore in the interest of justice and circumstances of the case, it will not be appropriate to remand the matter as that would result in the revival of an illegal order. It is therefore submitted that the writ petition be dismissed.

A perusal of the impugned order

dated 14.5.2000 clearly reveals that the order of allotment made in favour of the petitioner on 4.12.2000 was cancelled only on the ground that the same was passed by completely ignoring the earlier order of the Government dated 29.7.2000. The order dated 29.7.2000 was addressed to the Sub-Divisional Officer, Aklera himself. When already the allotment of the land had been made in favour of the respondent no.4 and 5 by the Government, the same land was not available to be allotted to the petitioners again and that too by a much inferior authority like Sub-Divisional Officer. Although the contention of the learned counsel for the respondent no.4 and 5 has been that they continue to remain in possession of the land in dispute because according to them the order of regularization passed by the

Revenue Minister which was made on the basis of 'Hibanama', (Gift) in their favour by those against whom the ceiling proceedings were drawn and land was found surplus but there is nothing on record at least from the side of the State Government to substantiate whether even after the allotment made in favour of the petitioners was cancelled, the land was again alloted to the respondent no.4 and 5 and they were put in possession of the same. The reply filed by the State Government reveals that subsequent to the cancellation of the order made in favour of the petitioner, the land in dispute was again entered as Sewai Chak vide mutation no.122 dated 10.7.2000 and was taken possession of by the State Government. While I do not find any illegality or infirmity in the order

cancelling allotment of the petitioners but at the same time rejection of the claim of the petitioners herein would not have the effect of sanctifying the claim of respondent no.4 and 5 for which they would be free to take any remedy that may be available to them under law.

With these observations the writ petition stands dismissed. There shall be no order as to costs.

(Mohammad Rafiq),J.

Rs/-